

## **Assembly Bill No. 2365**

### **CHAPTER 258**

An act to amend Sections 3011 and 3041.5 of the Family Code, relating to child custody.

[Approved by Governor September 7, 2012. Filed with  
Secretary of State September 7, 2012.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2365, Nestande. Family law: child custody.

Existing law requires a family court to determine the best interest of the child for purposes of deciding child custody in proceedings for dissolution of marriage, nullity of marriage, legal separation of the parties, petitions for exclusive custody of a child, and proceedings under the Domestic Violence Prevention Act. In making that determination, existing law requires the court to consider specified factors, including whether either of the child's parents habitually or continually uses alcohol or illegal drugs. The court may require independent corroboration of an allegation that a parent is habitually or continually using controlled substances or illegal drugs.

This bill would require a family court to consider, in determining the best interest of the child in custody proceedings, either parent's habitual or continual abuse of prescribed controlled substances.

Existing law, until January 1, 2013, authorizes a court to require any person who is seeking custody of, or visitation with, a child who is the subject of a custody, visitation, or guardianship proceeding, to undergo testing for the illegal use of controlled substances and the use of alcohol under specified circumstances, as specified.

This bill would delete the repeal clause for these provisions and thus extend the operation of these provisions indefinitely.

*The people of the State of California do enact as follows:*

**SECTION 1.** Section 3011 of the Family Code is amended to read:

3011. In making a determination of the best interest of the child in a proceeding described in Section 3021, the court shall, among any other factors it finds relevant, consider all of the following:

- (a) The health, safety, and welfare of the child.
- (b) Any history of abuse by one parent or any other person seeking custody against any of the following:
  - (1) Any child to whom he or she is related by blood or affinity or with whom he or she has had a caretaking relationship, no matter how temporary.
  - (2) The other parent.

(3) A parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship.

As a prerequisite to considering allegations of abuse, the court may require substantial independent corroboration, including, but not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of sexual assault or domestic violence. As used in this subdivision, “abuse against a child” means “child abuse” as defined in Section 11165.6 of the Penal Code and abuse against any of the other persons described in paragraph (2) or (3) means “abuse” as defined in Section 6203 of this code.

(c) The nature and amount of contact with both parents, except as provided in Section 3046.

(d) The habitual or continual use of controlled substances, the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances by either parent. Before considering these allegations, the court may first require independent corroboration, including, but not limited to, written reports from law enforcement agencies, courts, probation departments, social welfare agencies, medical facilities, rehabilitation facilities, or other public agencies or nonprofit organizations providing drug and alcohol abuse services. As used in this subdivision, “controlled substances” has the same meaning as defined in the California Uniform Controlled Substances Act, Division 10 (commencing with Section 11000) of the Health and Safety Code.

(e) (1) Where allegations about a parent pursuant to subdivision (b) or (d) have been brought to the attention of the court in the current proceeding, and the court makes an order for sole or joint custody to that parent, the court shall state its reasons in writing or on the record. In these circumstances, the court shall ensure that any order regarding custody or visitation is specific as to time, day, place, and manner of transfer of the child as set forth in subdivision (b) of Section 6323.

(2) The provisions of this subdivision shall not apply if the parties stipulate in writing or on the record regarding custody or visitation.

SEC. 2. Section 3041.5 of the Family Code is amended to read:

3041.5. In any custody or visitation proceeding brought under this part, as described in Section 3021, or any guardianship proceeding brought under the Probate Code, the court may order any person who is seeking custody of, or visitation with, a child who is the subject of the proceeding to undergo testing for the illegal use of controlled substances and the use of alcohol if there is a judicial determination based upon a preponderance of evidence that there is the habitual, frequent, or continual illegal use of controlled substances or the habitual or continual abuse of alcohol by the parent, legal custodian, person seeking guardianship, or person seeking visitation in a guardianship. This evidence may include, but may not be limited to, a conviction within the last five years for the illegal use or possession of a controlled substance. The court shall order the least intrusive method of

testing for the illegal use of controlled substances or the habitual or continual abuse of alcohol by either or both parents, the legal custodian, person seeking guardianship, or person seeking visitation in a guardianship. If substance abuse testing is ordered by the court, the testing shall be performed in conformance with procedures and standards established by the United States Department of Health and Human Services for drug testing of federal employees. The parent, legal custodian, person seeking guardianship, or person seeking visitation in a guardianship who has undergone drug testing shall have the right to a hearing, if requested, to challenge a positive test result. A positive test result, even if challenged and upheld, shall not, by itself, constitute grounds for an adverse custody or guardianship decision. Determining the best interests of the child requires weighing all relevant factors. The court shall also consider any reports provided to the court pursuant to the Probate Code. The results of this testing shall be confidential, shall be maintained as a sealed record in the court file, and may not be released to any person except the court, the parties, their attorneys, the Judicial Council, until completion of its authorized study of the testing process, and any person to whom the court expressly grants access by written order made with prior notice to all parties. Any person who has access to the test results may not disseminate copies or disclose information about the test results to any person other than a person who is authorized to receive the test results pursuant to this section. Any breach of the confidentiality of the test results shall be punishable by civil sanctions not to exceed two thousand five hundred dollars (\$2,500). The results of the testing may not be used for any purpose, including any criminal, civil, or administrative proceeding, except to assist the court in determining, for purposes of the proceeding, the best interest of the child pursuant to Section 3011 and the content of the order or judgment determining custody or visitation. The court may order either party, or both parties, to pay the costs of the drug or alcohol testing ordered pursuant to this section. As used in this section, “controlled substances” has the same meaning as defined in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code).